IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15458 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BAKALI RUKIYABAI AADAM & 2 - Petitioner(s)

Versus

BHUJ AREA DEVELOPMENT AUTHORITY - Respondent(s)

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Appearance :

MR NV ANJARIA for Petitioner(s) : 1 - 3.
MR PRASHANT G DESAI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/09/2005

ORAL JUDGMENT

Rule. Shri Prashant G. Desai, learned advocate waives service of Rule on behalf of respondent. With the consent of the parties, the matter is taken for Final Hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioners have prayed for an appropriate writ, order or direction directing the respondent Bhuj Area Development Authority to undergo necessary statutory procedure and formality under the Gujarat Town Planning and Urban Development Act, 1976 read with Gujarat Town Planning and Urban Development Rules, 1979 in due regard to the ownership of the petitioners in respect of the land bearing Survey No. 7/1 situated in the North-West corner of Traverse Survey No. 870 in City Survey No. 4 of Town of Bhuj admeasuring 7 gunthas (700 sq.mtrs.) stated to have been converted into Original Plot No. 1670 and Final Plot No. 1112 in the Town Planning Scheme No. 8 in the city of Bhuj-Kachchh, so as to accord ownership rights in respect of said Final Plot to the petitioners issuing possession receipts and making all available rights under the Act and Rules as owners of the said land.

3. There was a dispute with regard to ownership of the land bearing Survey No. 7/1 situate in the North-West corner of Traverse Survey No. 870 in City Survey No.4 of town of Bhuj and proceedings under Section 37(2) of the Bombay Land Revenue Code {“the Code” for short} were initiated. It appears from the record that by order dated 30th December 1994 the Deputy Collector held the petitioner to be the owner of the aforesaid land in question. Thereafter, the Town Planning Scheme with regard to the land in

quesiton was introduced and inspite of the order passed by the Deputy Collector declaring the petitioners to be the owners of the land in quesiton the Town Planning Authority did not give effect to the said order and did not consider the rights of the petitioner and therefore the petitioners had preferred Special Civil Application No.5746 of 2004. The said Special Civil Application was disposed of by this Court by judgment and order dated 25.1.2005 observed and declared as under;

> “It is an admitted position, that, as on today, the order passed by the Deputy Collector, Kutch-Bhuj dated 30th December 1994 stands. Those proceedings arise under Section 37(2) of the Bombay Land Revenue Code. It is also an admitted position that as such the effect of the said order is already given by the respondent No.4 – Bhuj Urban Development Authority and the petitioners/power of attorney holders of the petitioners and the coowners are allotted land admeasuring 370 sq.mtrs. Of land in lieu of land for which the order came to be passed by the Deputy Collector dated 30th December 1994. It is also an admitted position that the proposal for approval sought by respondent No.3, i.e., Deputy Collector, Kutch-Bhuj to approve the order dated 30th December 1994 is still pending with the Collector-Kutch-Bhuj. Be that as

> it may, considering the aforesaid facts and circumstances and considering the affidavit-in-reply filed on behalf of the Bhuj Urban Development Authority respondent No.4 herein, it is directed that it will be open to the Bhuj Urban Development Authority to proceed on the basis of the order dated 30th December 1994 passed by the Deputy Collector, Kutch-Bhuj. It seems that the respondent No.4 has already proceeded on the basis of the aforesaid order dated 30th December 1994 and against the aforesaid land, land admeasuring 370 sq.mtrs., of land is already allotted under the Town Planning Scheme which has become final. It is also declared that, as on today, the order passed by the Deputy Collector, Kutch-Bhuj dated 30th December 1994 under section 37(2) of the Act stands, and the same shall continue to be in operation unless the said order is stayed or modified or reversed by the competent forum known to law."

It is the contention on behalf of the petitioners that inspite of the aforesaid order passed by this Court and inspite of the legal notice served upon the respondent the respondent authority is not giving effect to the order passed by the Deputy Collector dated 30th December 1994 and is not completing the proceedings under the provisions of the Gujarat Town Planning and Urban Development Act, 1976 ("the Act" for short) and the Gujarat Town Planning and Urban

Development Rules, 1979 (“the Rules” for short).

4. Shri Prashant G. Desai, learned advocate appearing on behalf of the respondent has submitted that in fact the respondent authority has already prepared necessary forms to complete the formalities and proceedings under the provisions of the Act and the Rules. However, the respondent authority has approached the Collector, Kutch-Bhuj to know whether the order passed by the Deputy Collector, Kutch-Bhuj dated 30th December 1994 is taken under suo motu revision by the competent authority or not and according to them the Collector has approached the State Government but there is no further response from the Collector thereafter.

5. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that by order dated 30th December 1994 the Deputy Collector, Kutch-Bhuj has passed the order under Section 37(2) of the Code declaring the petitioners to be owners of the land in question and as on today the said order stands and the same is not disturbed by any higher authority. Even this Court also in aforesaid Special Civil Application No. 5746 of 2004 has declared that as on today, i.e., as on 25.1.2001 the order passed by the Deputy Collector, Kutch-Bhuj dated 30th December 1994 under Section 37(2) of the Code stands and the same shall continue to be in operation unless the said order is stayed or modified or reversed by

the competent forum known to law. Under the circumstances, it is necessary to hold that so long as the order passed by the Deputy Collector, Kutch-Bhuj dated 30th December 1994 stands, the authority under the Town Planning Act more particularly the respondent authority is bound to give effect to the same and complete the proceedings. The respondent is, therefore directed to complete the formalities as required under the provisions of the Act and the Rules and also complete the proceedings with regard to the land in question by issuing necessary forms such as Forms No. F and K and give effect to the order passed by the Deputy Collector, Kutch-Bhuj, dated 30th December 1994 within the period of 3 months from the date of receipt of this order. However, it is made clear as agreed by the learned advocate appearing on behalf of the petitioners that the completion of formalities and proceedings and their consequential effect would be subject to ultimate decision that may be taken by the competent forum known to law with regard to the order passed by the Deputy Collector, Kutch-Bhuj dated 30th December 1994. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.